

IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF OKLAHOMA

BARCLAY TABER,	)	
	)	
Plaintiff,	)	
	)	
	)	CIV-12-1113-D
v.	)	
	)	
JUSTIN JONES, et al.,	)	
	)	
Defendants.	)	

REPORT AND RECOMMENDATION

Plaintiff, a state prisoner appearing *pro se*, filed this civil rights action pursuant to 42 U.S.C. § 1983. United States District Judge DeGiusti referred this matter to the undersigned Magistrate Judge for initial proceedings consistent with 28 U.S.C. § 636(b)(1)(B). Presently before the Court is Plaintiff's "Motion To Dismiss." (Doc. # 15).

In his Motion, Plaintiff seeks to voluntarily dismiss his cause of action against Defendants Chester and Holsten. Neither Chester or Holsten have been served with process. The Court's record reflects that the United States Marshal's Service has filed returns indicating that neither of these Defendants could be served with process because they no longer work at the Lawton Correctional Facility ("LCF"), and the business address of Lawton Correctional Facility is the only address provided by Plaintiff for the purpose of effecting service of process upon these Defendants.

In light of the fact that no answer or other responsive pleading has been filed by these

Defendants, Plaintiff's request to dismiss Defendants Chester and Holsten from the action should be granted.

RECOMMENDATION

Based on the foregoing findings, it is recommended that Plaintiff's cause of action against Defendants Chester and Holsten be dismissed without prejudice. Plaintiff is advised of the right to file an objection to this Report and Recommendation with the Clerk of this Court by March 28<sup>th</sup>, 2013, in accordance with 28 U.S.C. § 636 and Fed. R. Civ. P. 72. The failure to timely object to this Report and Recommendation would waive appellate review of the recommended ruling. Moore v. United States, 950 F.2d 656 (10<sup>th</sup> Cir. 1991); cf. Marshall v. Chater, 75 F.3d 1421, 1426 (10<sup>th</sup> Cir. 1996) ("Issues raised for the first time in objections to the magistrate judge's recommendation are deemed waived.").

This Report and Recommendation does not dispose of all issues referred to the undersigned Magistrate Judge in the captioned matter.

ENTERED this 8<sup>th</sup> day of March, 2013.

  
GARY M. PURCELL  
UNITED STATES MAGISTRATE JUDGE